



**KNOBBE MARTENS OLSON & BEAR**  
**2040 MAIN STREET**  
**FOURTEENTH FLOOR**  
**IRVINE, CA 92614**

**COPY MAILED**

**APR 20 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Vadim R. Viviani et al :  
Application No. 09/993,874 : **DECISION ON PETITION**  
Filed: November 14, 2001 : **UNDER 37 CFR 1.55(c)**  
Attorney Docket No. SAEG150.01CP1C1 :

This is a decision on the petition under 37 CFR 1.55(c), filed March 21, 2005, requesting acceptance of an unintentionally delayed claim under 35 U.S.C. § 119 (a) - (d) for benefit of the filing date of the following foreign application number: Italian Application No. IT1998000000195, filed September 2, 1998.

The petition is **DISMISSED** as moot for the reason stated below.

Petitioner has filed the instant petition to accept a late claim for foreign priority on the ground that the foreign Italian application number originally provided was incorrect.

The instant petition is unnecessary since the claim for priority was timely made in the oath or declaration as required by 37 CFR 1.63(c)(2) and within the time period provided by 37 CFR 1.55(a)(1). No petition and surcharge are required where an applicant provides the incorrect application number of the foreign application, since the Office was able to properly schedule the application for publication with the filing date given, thereby not affecting the prior art date under 35 U.S.C. § 102(e). However, if on the other hand, the wrong application filing date was provided, then a petition and surcharge would be required.<sup>1</sup> Accordingly, petitioner should review the Italian priority document to ensure that the correct filing date was provided. If it is discovered that the correct filing date was not provided within the time period set out in 37 CFR 1.55(a)(1)(i), then a petition and surcharge would be required as a requisite for accepting the foreign claim for priority under 37 CFR 1.55(c).

In view of the above, the instant petition is dismissed as involving a moot issue. Consequently, the \$1,370 surcharge submitted will be credited to petitioner's deposit account in due course.

---

<sup>1</sup> Note Q & A Nos. CX11 and CX12 of the American Inventor's Protection Act of 1999 on the USPTO.gov website.

Receipt is acknowledged of papers submitted under 35 U.S.C. § 119. The priority papers are accepted as timely filed and have been placed of record in the file.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop PETITIONS  
                                    Commissioner for Patents  
                                    Post Office Box 1450  
                                    Alexandria, VA 22313-1450

By hand:                     Customer Service Window  
                                    Mail Stop Petitions  
                                    Randolph Building  
                                    401 Dulany Street  
                                    Alexandria, VA 22314

By fax:                        (703) 872-9306  
                                    ATTN: Office of Petitions

Any questions concerning this matter may be directed to the Wan Laymon at (571) 272-3220.



Frances Hicks  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy